

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 10/13/2016  
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00461060-CU-NP-VTA  
CASE TITLE: P.Q.L INC VS REVOLUTION LIGHTING TECHNOLOGIES INC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Motion To Quash - Service of Summons and dismiss Action  
CAUSAL DOCUMENT/DATE FILED: Motion to Quash Service of Summons, 08/24/2016

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**The morning calendar in courtroom 43 will begin at 9 a.m. Cases including *ex parte* matters will not be called** prior to 9 a.m. Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by CourtCall, please call in between 8:35 and 8:45 a.m.

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you can send an email to the court at: Courtroom43@ventura.courts.ca.gov or send a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-477-5894, stating that you submit on the tentative. Do not call in lieu of sending an email or telefax. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce's rules and procedures for law and motion matters, *ex parte* matters, telephonic appearances, trial rules and procedures, etc., please visit: <http://www.ventura.courts.ca.gov/Courtroom/C43>

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**The court's tentative ruling is as follows:**

Grant Defendant Aston Capital and James DePalma's Motion to Quash Service of Summons and Dismiss Action. Plaintiff PQL has not met its burden of proof by a preponderance of the evidence to demonstrate the defendants have sufficient contacts with the forum state to justify jurisdiction. (*Thomson v. Anderson* (2003) 113 Cal.App.4<sup>th</sup> 258, 266.)

Revolution contends that in opposing the present motion, PQL committed a serious violation of this Court's order, by publicly filing an email marked as "CONFIDENTIAL" by Revolution's counsel. (The email is Ex. B to the Declaration of T. Randolph Cantonese, Esq.) Revolution contends that by filing this email, PI violated Section 6 of this Court's Protective Order ("PO"). The Court orders the email removed from the public file and sealed. At the hearing, the Court will determine appropriate sanctions for Plaintiff/PQL's alleged violation of the court's protective order.

Grant the request for judicial notice as to Ex. A. As to Ex. B, C, and D, grant existence of the documents, but deny to the extent PQL asks the Court to take notice of the truth of the statements contained therein. The Court may not take judicial notice of the truth of the content of the documents. (See *North Beverly Park Homeowners Ass'n v. Bisno* (2007) 147 Cal.App.4<sup>th</sup> 762, 778.

Evidentiary objections to Deposition transcript of Gene Fein

## Objection Numbers:

- Sustain
- Sustain
- Sustain
- Overrule (it asks what he believes and he responded accordingly)
- Sustain
- Sustain
- Sustain
- Sustain
- Sustain (?)
- ? [The page is cut off. The quotation may have been qualified in the following comments]
- Overrule.
- Overrule.
- Overrule.
- Overrule.
- Sustain
- Overrule
- Overrule
- Overrule
- Sustain

Evidentiary objections to declaration of T. Randolph Catanese.

## Objection Number:

- Overrule
- Sustain
- Sustain
- Sustain
- Sustain
- Sustain

**Discussion:**

PI appears to have abandoned any claim that general jurisdiction exists over Aston or DePalma. Plaintiff has no evidence to dispute that both Aston and DePalma: (1) are not domiciled in CA; (2) do not have offices in CA; (3) do not employ employees in CA; and (4) do not own property in California. (DePalma Declaration, ¶¶ 3, 4, & 6.) While PI argues that DePalma's declaration is "directly controverted by facts and evidence contained in the Request for Judicial Notice and Declaration of T. Randolph Cantonese, Esq.," this statement lacks merit since none of the evidence cited by Plaintiff contradicts the facts stated in DePalma's declaration.

To satisfy the burden of showing specific jurisdiction, a plaintiff must prove the "controversy is related to or arises out of defendants' contacts with the forum." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4<sup>th</sup> 523, 536.) PQL did not present admissible evidence to support a finding that they purposely availed themselves of the benefits of California, or directed activities toward CA, for the purposes of establishing jurisdiction. Aston and DePalma provide a laundry list of examples showing how PI PQL's evidence is either irrelevant to establishing jurisdiction inadmissible, or both. (See 11 examples on page 3, line 7 through page 5, line 28 of the Reply of Aston and DePalma.)

Fein's testimony does not establish that Aston or DePalma had contacts with CA, or directed "unlawful acts" toward CA. The testimony shows that DePalma (as a member of the Revolution board) was present at Revolution board meetings in CT, and *heard* that Revolution employees were making sales to P's customers in CA. Finding a non-resident's mere knowledge that a party to the litigation may commit an unlawful act in California is insufficient to establish a specific personal jurisdiction over the non-resident. (*Pavlovich v. Superior Court* (2002) 29 Cal.4<sup>th</sup> 262, 276.) "[I]t is well established by California case law that for jurisdictional purposes the acts of corporate officers and directors, in their official capacities, are acts exclusively of (*qua*) the corporation, and are thus not material for purposes of establishing minimum contacts as to individuals." (*Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 713.) Other examples pointed out in the Reply (page 6, line 14 through page 8, line 13) evidence that PI has not met its burden. Plaintiff PQL

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has not met its burden of proof by a preponderance of the evidence to demonstrate the defendant has sufficient contacts with the forum state to justify jurisdiction. (*Thomson v. Anderson* (2003) 113 Cal.App.4<sup>th</sup> 258, 266.)